IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5250 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA MUNICIPAL CORPORATION

Versus

PUSHPENDRA PRABHAKAR BHATT SINCE DECEASED THRO HIS HEIRS

Appearance:

MS URVI VORA for MR PRANAV G DESAI for Petitioner

MR RD RAVAL for Respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 30/10/2002

ORAL JUDGEMENT

1. By consent of learned counsel for the parties, this matter is taken up for final hearing today.

2. The petitioner Vadodara Municipal Corporation has challenged in the present petition the award passed by the Labour Court, Baroda, in Reference LCV No.38/85 on

2nd January 1999. The Labour Court has granted in the said award reinstatement to the respondent-workman with 50% backwages together with continuity in service.

3. It requires to be noted that the respondent-workman had expired on 28th November 2000 and the heirs of the workman are brought on record and are represented by his widow Smt. Rakshaben Pushpendra Bhatt and are represented by learned advocate Shri R.D. Raval.

4. Learned advocate Ms. Urvi Vora for Mr. P.G. Desai for the respondent Corporation states that the petition was admitted mainly on the ground as to whether the deceased employee could be ordered to be reinstated, particularly when problems had arisen due to an amendment in the qualifications necessary for the post of Compounders in dispensaries of the Municipal Corporation. In this context it was contended that the respondent workman did not possess a pharmacy diploma and is therefore not qualified to hold the post of Compounder.

5. On the other hand, learned counsel for the respondent has pointed out that at the time of admission of the matter it was the Corporation's contention that there are no unqualified compounders engaged by the Corporation. Mr. Raval states that this very contention is misplaced in view of the fact that Mr. Bharat M. Solanki, Mr. Ratilal G. Pujari, Mr. Jesingh B. Shirke, Mr. Gajanan M. Solanki, Mr. Dahyabhai N. Solanki, mrs. Madhuben Limbasiya, Mr. Shantilal D. Vaghela and Mr. Babubhai Valand are all unqualified Compounders who have been made permanent by the Corporation and are even presently so working. He further submits that the aforesaid unqualified Compounders had raised a demand for equal wages or pay-scales at par with qualified Compounders vide letter dated 5th April 1999 which is produced with the affidavit in reply. He states that a Reference has also been made on the basis of this demand being No.IT 42/2000. According to him this establishes that the basic contention of the Corporation based on the fact that they have no unqualified Compounders, does not bear scrutiny, since such Compounders have in fact been made permanent and are consequently seeking equal pay at par with qualified Compounders. Mr. Raval also submitted that the deceased workman had a long standing experience as a Compounder and also had a qualification of SSI, in which comprehensive knowledge of diseases and medicines was an integral part of curriculum of the course. He also had a qualification of Para-medical worker of leprosy which included not only knowledge as a Compounder but also

knowledge of different medicines, treatment of different diseases and application of different medicines and ointments for various diseases including leprosy. The deceased workman had passed SSC and had more than 8 years of compoundering experience before joining the Corporation. In fact as compared to other non-qualified Compounders, the deceased workman possessed better and proper qualification suitable to the post of Compounder and in fact there had been no complaints in respect of his work. Mr. Raval also submitted that the petition had been admitted only on the point of qualification and that at the admission stage other arguments had not impressed the Court.

6. Ms Urvi Vora for Mr. P.G. Desai for the Corporation fairly conceded that the matter had been admitted only on the issue of qualification, and on the assertion that there are other compounders less qualified than the respondent-workman already working with the Corporation, who have moved a reference for revision of pay-scales as aforesaid. In any case it was submitted that the respondent-workman did not have the required qualification of holding a pharmacy diploma, notwithstanding the fact that he had good skills, experience and better qualifications qua other Compounders. It was submitted that in any case if the award of the Labour Court is sustained, it should not result in giving a higher pay-scale of qualified Compounders, inasmuch as all such permanent Compounders have not yet succeeded in a reference which is pending before the Industrial Tribunal at Vadodara.

7. It was lastly urged by Mr. Raval that the deceased had suffered considerably due to unemployment and he unfortunately died, and considering the lapse of time consumed, regard must also be had to the fact that in spite of his intention to move this Court for an appropriate order under section 17-B of the Industrial Disputes Act, he could not do so because he was bedridden. He, therefore, urged that the widow of the deceased would be entitled to receive the benefit of the award which is the subject matter of the challenge in the present petition as well as other benefits, due to the fact that the concerned workman expired while in harness, and consequently she ought to be given all the due benefits in terms of the award. It was further urged that according to the policy of the Corporation, at least 12% interest should also be awarded.

7.1 This contention was opposed by the petitioner Corporation by a submission that no interest ought to be

directed to be paid since this would be a burden on the public exchequer and that payments were in fact not made only because of the stay order granted by this Court.

8. Having heard the learned advocates for the respective parties, and having perused the award and other evidentiary material which was pointed out during the course of hearing, I am of the view that the impugned award does not require any interference particularly when it is established by the respondent that other non-qualified Compounders are working permanently with the Corporation, and also on the simple fact that no other reason is pointed out to distinguish the case of the respondent workman from those cases, or to create any justification for discrimination.

9. It requires to be noted that no other points were pressed or urged before me, and therefore, other points which may have been raised in the memo of petition do not require to be considered.

10. On the question of interest, I am satisfied that this is not a fit case where interest should be granted to the workman, only on sympathetic considerations.

11. Consequently the present petition challenging the impugned award is dismissed and the petitioner Corporation is directed to comply with the impugned award.

12. The payment which would be due to the deceased workman shall be made to the widow who has been joined as a party in the present petition. It is further clarified that since the concerned workman had expired on 28th November 2000, the question of reinstatement does not arise, and the wages due to him will accrue upto the date of his death and shall be payable to his widow as aforesaid. It is further clarified and directed that all the benefits due to the deceased workman shall stand bestowed upon the heirs of the deceased workman and shall be paid to his widow. The petitioner Corporation shall henceforth communicate with the widow in case any communication is necessary and/or her cooperation in effecting the payment is necessary. It is expected that the Corporation shall comply with the aforesaid directions within a period of three months from today.

13. Consequently the petition is dismissed and rule is discharged with no order as to costs. Interim relief stands vacated.

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